

**Valid Existing Rights (VER) Formal Rulemaking
Docket 2010-022, Cause RCOAL-2010-01
Board Meeting June 23, 2010**

Timetable for VER Rulemaking

2/1/2008	OSM letter to DOGM requesting amendment to state rules due to federal regulation changes which were also upheld by the federal courts.
9/24/2008	Briefing to the Board on commencing the informal rulemaking process.
12/14/2009	OSM concurred with proposed rule edits by Division after several exchanges.
12/16/2009	Draft rules provided to UMA for review. UMA previously concurred with DOGM and OSM reaching agreement on rules prior to UMA review, since federally required.
1/27/2010	Briefing to the Board on draft rules. Planned distribution to Informal Rules Review Group, and this occurred on January 28 th .
3/24/2010	Final Board briefing, completing the informal process. UMA and OSM support.
4/5/2010	Division formal petition to the Board.
5/9/2010	Notice of Hearing in Salt Lake Tribune and Deseret News.
5/22/2010	Board approved proceeding with formal rulemaking process.
5/26/2010	Filing in eRules by Division, with 30 day comment period, and June 23 hearing.
6/15/2010	State Bulletin published proposed rule amendments. Comment period commences.
6/23/2010	Hearing for public comment.

Planned dates:

7/15/2010	End of public comment period.
7/28/2010	Final Board hearing to approve rule amends, assuming no substantive amends. Division files effective date in eRules.

Background of Valid Existing Rights (VER) Rulemaking / Purpose of VER Rules

- SMCRA prohibits or restricts surface coal mining operations on certain lands, including,
 - Any lands within the boundaries of:
 - (1) The National Park System;
 - (2) The National Wildlife Refuge System;
 - (3) The National System of Trails;
 - (4) The National Wilderness Preservation System;
 - (5) The Wild and Scenic Rivers System,
 - (6) National Recreation Areas designated by Act of Congress.
 - Any Federal lands within a national forest.;
 - Any lands where the operation would adversely affect any publicly owned park or any place in the National Register of Historic Places.
 - Within 100 feet, measured horizontally, of the outside right-of-way line of any public road.
 - Within 300 feet, measured horizontally, of any occupied dwelling.
 - Within 300 feet, measured horizontally, of any public building, school, church, community or institutional building, or public park.
 - Within 100 feet, measured horizontally, of a cemetery.
- When enacted these restrictions were “subject to valid existing rights,” and excluded operations in existence on the date of enactment.
- Congress did not define “valid existing rights,” leaving it to become a contentious issue among coal operators, homeowners, environmentalists, and land managing agencies. Regulation ranged from simply asking the mine to show property rights in the coal, to a requirement that the operator prove that all surface mining permits had been obtained for the coal in question before the date of enactment. Utah required an operator to demonstrate property rights, that the coal was adjacent to the current operation, and that the coal was needed to keep the mining and reclamation operation economically viable as a whole.
- New law prohibits coal operators from claiming valid existing rights unless they possessed the property rights and authority to mine prior to the SMCRA protections, and had also made a good faith attempt to acquire permits for those properties to be mined before the enactment, or the coal was adjacent to the current operation, and that the coal was needed to keep the mining and reclamation operation economically viable as a whole.
- .Changed “date of enactment” language to the date when the protections listed above became effective. (e.g. if an area is newly designated as a National Park, VER would apply to that area)
- Should not have much of an impact in Utah